

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARCUS CLEMMONS,

Plaintiff,

v

MDOC EMPLOYEE RUO SCHILLING,

Defendant.

Case No. 1:06-cv-615

Hon. Wendell A. Miles

ORDER ON OBJECTIONS TO MAGISTRATE JUDGE'S
REPORT AND RECOMMENDATION

On September 20, 2006, United States Magistrate Judge Ellen S. Carmody issued a Report and Recommendation ("R & R") recommending that plaintiff's complaint be dismissed for failure to state a claim. Plaintiff has filed objections to the R & R (docket no. 5).

The court, having reviewed the R & R and the United States Magistrate Judge and the relevant portions of the file in this matter, and having reviewed plaintiff's objections, agrees with the Magistrate Judge's conclusions.

In his objections to the R & R, plaintiff for the first time argues that he has asserted a First Amendment claim based on denial of access to the courts, insofar as his typewriter held in its memory all of plaintiff's legal files. It is noted that plaintiff's complaint makes no allegation of suffering any prejudice to ongoing legal proceedings; instead, he asks only for replacement of his typewriter. However, to the extent that plaintiff seeks leave to amend his pleading to assert a claim of denial of access to courts, such an amendment would be futile. A claim of denial of

access to the courts must allege more than mere negligence by the state actor who caused the injury. Sims v. Landrum, No. 05-1322, 170 Fed. Appx. 954, 2006 WL 637196, **2 (6th Cir. Mar. 14, 2006). In this instance, plaintiff has alleged damage to his typewriter, but he has failed to allege that any injury is the result of more than negligence. He has therefore failed to state a claim, and his allegations do not warrant an amendment of his complaint to state a claim of denial of access to the courts.

The court overrules plaintiff's objections to the R & R and hereby approves and adopts the R & R as the decision of the court.

So ordered this 30th day of October, 2006.

/s/ Wendell A. Miles
Wendell A. Miles
Senior U.S. District Judge